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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 SHARI LUCAS-HORNE,) CASE NO. CV 10-03325 RZ
12 Plaintiff,)
13 vs.) MEMORANDUM OPINION
14 MICHAEL J. ASTRUE, Commissioner) AND ORDER
15 of Social Security,)
16 Defendant.)

17 This matter returns to the Court after a prior decision, in which the Court held
18 that the Administrative Law Judge had erred by not considering Plaintiff's mental
19 impairments to be severe. This time, severity is not an issue, the Administrative Law Judge
20 having considered the severe impairments and having concluded that, despite Plaintiff's
21 severe mental and physical impairments, Plaintiff still could perform her past relevant work
22 as a cashier. Plaintiff now challenges the decision on two other grounds.

23 First, Plaintiff says that the determination of her residual functional capacity
24 is not backed by substantial evidence, because the Administrative Law Judge wrongly
25 discounted the opinion of the treating physician. However, Plaintiff does not state anything
26 with particularity about the treating physician's opinion, such as the way in which it
27 demonstrates that Plaintiff is disabled. Nevertheless, the Court has reviewed the matter,
28 and finds no error in the decision by the Administrative Law Judge.

1 A treating physician's opinion can be entitled to controlling weight under
2 some circumstances, but the Administrative Law Judge is not required to accept it. Rather,
3 if she gives specific and legitimate reasons for doing so, she may discredit such an opinion.
4 *Batson v. Commissioner*, 359 F.3d 1190, 1195 (9th Cir. 2004). The Administrative Law
5 Judge here did not reject everything that the treating physician, Dr. Tolwin, said. She
6 accepted his diagnosis and thoughtfully considered his records and opinions. The one
7 portion that she did not fully accept was the statement, made in 2004, that Plaintiff suffered
8 from depression to a disabling extent for a year before Dr. Tolwin first saw her in October
9 2002. [AR 565]

10 The Administrative Law Judge observed that Dr. Tolwin's initial formal
11 examination was "essentially unremarkable." [AR 566] Therefore, at the time that, by
12 Social Security regulations, Plaintiff would have had to be disabled, the treating physician
13 was not making any medical notation from which a person reasonably could conclude that
14 Plaintiff in fact was disabled. Thus, as the Administrative Law Judge appropriately found,
15 "at the first level of analysis, Dr. Tolwin's opinions about the claimant's status at any time
16 is not well supported." [*Id.*] Moreover, as the Administrative Law Judge previously had
17 found, Plaintiff's level of activity was not as inhibiting as she had testified, during the very
18 period that Plaintiff testified that her symptoms had become exacerbated. [AR 565] If
19 Plaintiff were as unable to work as she claimed at the time that she claimed, the record
20 would not show the same level of activity. Moreover, Plaintiff had claimed an
21 exacerbation of her symptoms based on an event in 1997, but previously had alleged an
22 onset date of five years later, and, in any event, did not make such an assertion the basis
23 for her prior claim that was decided in 1999. Given such inconsistencies, it was
24 appropriate for the Administrative Law Judge to conclude that "[a]t the second level of
25 analysis, given the discussions above, even an acceptance or partial acceptance of
26 Dr. Tolwin's ratings would not be shown pertinent to the situation through June 2002."
27 [AR 566] Accordingly, the Court finds that the Administrative Law Judge acted within her
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1 prerogative in declining to accept the treating physician's assessment that Plaintiff's
2 impairment was disabling.

3 Plaintiff's second argument is that the Administrative Law Judge wrongly
4 concluded that she was not credible. As noted above, however, the Administrative Law
5 Judge did not deny that Plaintiff showed symptoms of depression, as Plaintiff seems to
6 argue in her memorandum to the Court. Rather, she gave reasons — the inconsistency of
7 her statements, the curious timing of the allegations of exacerbation of symptoms, the
8 absence of documentation in the medical record of symptoms as great as Plaintiff now
9 claimed — from which she concluded that Plaintiff's testimony could not be accepted in
10 its entirety. This is an entirely reasonable approach, and the Administrative Law Judge
11 certainly was entitled to use this information — ordinary techniques of assessing credibility
12 — in evaluating Plaintiff's credibility. It is, of course, permissible to use ordinary
13 techniques to assess credibility. *Fair v. Bowen*, 885 F.2d 597, 604 (1989). Accordingly,
14 this argument also does not establish a basis for reversal.

15 In accordance with the foregoing, the decision of the Commissioner is
16 affirmed.

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18 DATED: January 28, 2011

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21 RALPH ZAREFSKY
22 UNITED STATES MAGISTRATE JUDGE
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